

**PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

PAAB Docket No. 2015-077-00911R

Parcel No. 221/00220-845-317

Stephen A. Lipovac,
Appellant,

v.

Polk County Board of Review,
Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on June 23, 2016. Stephen A. Lipovac was self-represented. Assistant Polk County Attorney Mark Taylor represented the Polk County Board of Review.

360 Alexander Circle Trust is the owner of a residential, two-story dwelling located at 360 Alexander Circle, Pleasant Hill. It was built in 1995 and has 1575 square feet of above-grade finish. It also has a 795 square-foot unfinished basement, an open porch, a deck, and a two-car attached garage. The site is 0.334 acres. (Ex. A).

The property's January 1, 2015, assessment was \$182,200, allocated as \$38,700 in land value, and \$143,500 in improvement value. On his protest to the Board of Review, Lipovac claimed the assessment was not equitable as compared with assessments of other like property under Iowa Code section 441.37(1)(a)(1)(a).

The Board of Review denied the petition. Lipovac then appealed to PAAB.

Findings of Fact

Lipovac explained that the subject property is a rental and as a result, typically has a higher level of wear and tear than owner-occupied properties. In response to this concern, Director of Litigation Amy Rasmussen explained that a variety of factors are considered in determining a property's condition, such as building permits, questionnaires to the buyers and sellers when a property transfers, and attempts are made to inspect properties during assessment cycles. She concedes that not all properties are inspected on an annual basis, but that the Assessor's Office tries to inspect properties when they can.

Lipovac submitted three properties he believes support his claim. (Exs. C & D). In Lipovac's opinion, submitting these comparable properties, which he believes are similarly situated and have lower assessments than his, demonstrates his property is assessed inequitably. The Board of Review submitted three properties it relied on in its decision. (Ex. F).

There is no indication that any of the comparable properties submitted by Lipovac recently sold, and no evidence was offered of their market value. Moreover, Lipovac did not submit any evidence of the fair market value of his property, such as a sale, an appraisal, comparable sales adjusted for differences, or a cost analysis. One of the Board's comparable properties, located at 365 Alexander Circle sold in March 2015 for \$191,000. While more than one comparable is required to support an equity claim, we note the assessed value to sales price ratio of this sale indicates it is assessed for less than its market value.

The following chart summarizes the equity comparables submitted by both Lipovac and the Board of Review. (Exs. C & F).

	2015 Total Assessed Value	Gross Living Area (GLA)	Grade	AV/SF
Subject	\$182,200	1575	3-10	\$115.68
665 SE 61st St	\$171,600	1538	3-10	\$111.57
5975 Robin Rd	\$172,100	1750	3-10	\$98.34
5115 Cypress Dr	\$171,200	1680	3-10	\$101.90
365 Alexander Cr	\$187,300	1673	3-10	\$111.95
340 NE 56th St	\$183,600	1574	3-05	\$116.65
335 NE 56th St	\$188,300	1584	3-05	\$118.88

All of the properties are similar in style, age, size, and general grade (quality) to the subject property. However, the three properties submitted by Lipovac are located outside of the subject's immediate area. (Ex. E). The Board of Review's comparable properties are located in closer proximity, next door to the subject property or within one block. (Ex. G). In Lipovac's opinion, his comparables are very similar to his property and he does not believe the differences in location are significant. When questioned, Lipovac agreed that his comparable property located at 665 SE 61st Street is located in Four Mile Township, rather than Pleasant Hill. (Ex. C & D). Moreover, when asked to compare the maps of his equity comparables (Ex. E) and the Board's equity comparables (Ex. G), he acknowledged that the Board's properties were located within a block of the subject property.

Rasmussen testified about the differences between the subject improvements cost analysis (Ex. B) and the cost analysis of Lipovac's comparable improvements (Ex. D), which result in variances between the assessments. As an example, she notes the property located at 665 SE 61st Street, has a smaller porch area, a larger deck area, and a different neighborhood factor as compared to the subject. These differences will result in a different assessment of the improvements compared to the subject property.

While all of the comparable improvements are generally similar to the subject, we conclude that the comparable properties submitted by the Board, which are immediately nearby the subject, are more reflective of its market value. Accordingly, we would expect the subject's total assessment to fall within the range of the comparables' assessments submitted by the Board. Indeed, the evidence indicates this to be the

case. The assessed value per-square-foot of the Board's properties ranges between \$111.95 and \$118.88, with an average of \$115.83. The subject's assessed value per-square-foot is within this range and very near the average.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

A taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

"(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual

value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Lipovac contends that he has offered the assessments of three comparable properties that show the subject property is inequitably assessed. Under *Maxwell*, a mere showing of a difference in assessments is not sufficient to establish inequity. Lipovac did not submit an opinion of the subject’s actual, fair market value. Further, none of the comparable properties recently sold and no evidence was offered of their actual value. As a result, the *Maxwell* analysis cannot be completed and Lipovac’s claim must necessarily fail. Moreover, the Board of Review’s comparables, which we found were more similar to the subject overall, indicate the subject is equitably assessed.

Lipovac also asserted his property is inferior in condition because it is a rental and not as well cared-for as an owner-occupied property. This argument is more akin to a market value or error claim under Iowa Code section 441.37(1)(a)(1(b, d) and is not properly before this Board. Even if it were, aside from generalized statements, Lipovac did not provide any evidence of the subject’s actual condition or how that condition affects its market value. If Lipovac believes the property is incorrectly listed, we suggest he contact the Assessor’s Office to request an interior inspection for future assessment cycles.

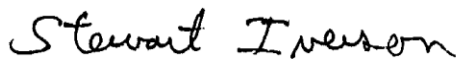
Order

IT IS THEREFORE ORDERED that the Polk County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

Copies to:

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